

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA—NORFOLK DIVISION**

TIMOTHY B. BOSTIC,

TONY C. LONDON,

CAROL SCHALL, and

MARY TOWNLEY,

Plaintiffs,

v.

CASE NO. 2:13-cv-395

JANET M. RAINES, in her official capacity as State Registrar of Vital Records, and

GEORGE E. SCHAEFER, III, in his official capacity as the Clerk of Court for Norfolk Circuit Court,

Defendants.

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, PRELIMINARY INJUNCTION**

Plaintiffs Timothy B. Bostic, Tony C. London, Carol Schall, and Mary Townley (“Plaintiffs”), by and through counsel, hereby move the Court to grant summary judgment in their favor or, in the alternative, to enter a preliminary injunction in this matter. Plaintiffs’ motion is made pursuant to Rules 56 and 65 of the Federal Rules of Civil Procedure, and Local Rules 7 and 56, on the grounds that Virginia Code Sections 20-45.2 and 20-45.3; Article I, Section 15-A of the Constitution of Virginia; and any other Virginia law that bars marriage between individuals of the same sex or prohibits the Commonwealth’s recognition of otherwise-lawful marriages between individuals of the same sex from other jurisdictions (collectively,

“Virginia’s Marriage Prohibition”) are facially unconstitutional. Virginia’s Marriage Prohibition should be declared unconstitutional and permanently enjoined throughout the Commonwealth.

As further set forth in the accompanying Memorandum In Support Of Plaintiffs’ Motion, Plaintiffs are entitled to summary judgment because Virginia’s Marriage Prohibition violates the Fourteenth Amendment of the United States Constitution as a matter of law. Virginia’s Marriage Prohibition violates Plaintiffs’ rights to due process because it impermissibly impairs Plaintiffs’ fundamental constitutional right to marry. Virginia’s Marriage Prohibition also violates Plaintiffs’ rights to equal protection because it burdens a fundamental constitutional right and because it discriminates against Plaintiffs on the basis of their sexual orientation and their sex.

At a minimum, this Court should preliminarily enjoin the application of Virginia’s Marriage Prohibition to Plaintiffs pending trial. Plaintiffs are likely to succeed on the merits of their claims, they will continue to suffer irreparable harm absent an injunction, a balance of the equities favors Plaintiffs, and a preliminary injunction serves the public interest.

The points and authorities that further support Plaintiffs’ motion are fully set forth in the accompanying Memorandum In Support Of Plaintiffs’ Motion For Summary Judgment Or, In The Alternative, Preliminary Injunction, along with the Declarations of Timothy B. Bostic, Tony C. London, Carol Schall, Mary Townley, and Charles B. Lustig, and the attached Exhibits.

For these reasons and those set forth in the accompanying Memorandum and Declarations, Plaintiffs respectfully request this Court grant their motion for summary judgment or, in the alternative, for a preliminary injunction.

Dated: September 30, 2013

Respectfully submitted,

/s/ Charles B. Lustig

Thomas B. Shuttleworth, VSB # 13330
tshuttleworth@srgslaw.com
Robert E. Ruloff, VSB # 13471
rruloff@srgslaw.com
Charles B. Lustig, VSB # 29442
clustig@srgslaw.com
SHUTTLEWORTH, RULOFF, SWAIN,
HADDAD & MORECOCK, P.C.
4525 South Blvd., Suite 300
Virginia Beach, VA 23452
T: (757) 671-6000
F: (757) 671-6004

David Boies, *pro hac vice pending*
dboies@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
333 Main St.
Armonk, NY 10504
T: (914) 749-8200
F: (914) 749-8300

Robert B. Silver, *pro hac vice pending*
rsilver@bsfllp.com
Joshua I. Schiller, *pro hac vice pending*
jischiller@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
T: (212) 446-2300
F: (914) 446-2350

William A. Isaacson, *pro hac vice pending*
wisaacson@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
T: (202)237-2727
F: (202)237-6131

Jeremy M. Goldman, *pro hac vice pending*
jgoldman@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900

Theodore B. Olson, *pro hac vice pending*
tolson@gibsondunn.com
Matthew D. McGill, *pro hac vice pending*
mmcgill@gibsondunn.com
Amir Tayrani, *pro hac vice pending*
atayrani@gibsondunn.com
Chantale Fiebig, *pro hac vice pending*
cfiebig@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
T: (202) 955-8668
F: (202) 467-0539

Theodore J. Boutrous, Jr., *pro hac vice pending*
tboutrous@gibsondunn.com
Joshua S. Lipshutz, *pro hac vice pending*
jlipshutz@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
T: (213) 229-7000
F: (213) 229-7520

Counsel for Plaintiffs

Oakland, CA 94612
T: (510) 874-1000
F: (510)874-1460

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2013, I electronically filed the foregoing Plaintiffs' Motion For Summary Judgment Or, In The Alternative, Preliminary Injunction with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to E. Duncan Getchell, Jr., Esq., Counsel for Defendant Rainey, and to David B. Oakley, Esq., Counsel for Defendant Schaefer.

Respectfully submitted,

/s/ Charles B. Lustig

Thomas B. Shuttleworth, VSB # 13330

tshuttleworth@srgslaw.com

Robert E. Ruloff, VSB # 13471

rruloff@srgslaw.com

Charles B. Lustig, VSB # 29442

clustig@srgslaw.com

SHUTTLEWORTH, RULOFF, SWAIN,

HADDAD & MORECOCK, P.C.

4525 South Blvd., Suite 300

Virginia Beach, VA 23452

T: (757) 671-6000

F: (757) 671-6004

David Boies, *pro hac vice pending*
dboies@bsflpp.com
BOIES, SCHILLER & FLEXNER LLP
333 Main St.
Armonk, NY 10504
T: (914) 749-8200
F: (914) 749-8300

Robert B. Silver, *pro hac vice pending*
rsilver@bsflpp.com
Joshua I. Schiller, *pro hac vice pending*
jischiiller@bsflpp.com
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
T: (212) 446-2300
F: (914) 446-2350

Theodore B. Olson, *pro hac vice pending*
tolson@gibsondunn.com
Matthew D. McGill, *pro hac vice pending*
mmcgill@gibsondunn.com
Amir Tayrani, *pro hac vice pending*
atayrani@gibsondunn.com
Chantale Fiebig, *pro hac vice pending*
cfiebig@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
T: (202) 955-8668
F: (202) 467-0539

Theodore J. Boutrous, Jr., *pro hac vice pending*
tbutrous@gibsondunn.com
Joshua S. Lipshutz, *pro hac vice pending*

William A. Isaacson, *pro hac vice pending*
wisaacson@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
T: (202)237-2727
F: (202)237-6131

jlipshutz@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
T: (213) 229-7000
F: (213) 229-7520

Counsel for Plaintiffs

Jeremy M. Goldman, *pro hac vice pending*
jgoldman@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
T: (510) 874-1000
F: (510)874-1460

Counsel for Plaintiffs